

United States District Court
NORTHERN DISTRICT OF CALIFORNIA

E-Filing

Pesticide Action Network North America; San
Francisco Bay Area Physicians for Social
Responsibility; Pineros y Campesinos Unidos Del

SUMMONS IN A CIVIL CASE

CASE NUMBER:

V.

United States Environmental Protection Agency;
Stephen L. Johnson, Administrator of the United
States Environmental Protection Agency

C 06 1366

MMC

TO: (Name and address of defendant)

United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Michael E. Wall, Natural Resources Defense Council, 111 Sutter Street, 20th Floor, San Francisco, CA
94104 Tel: 415.875.6100;

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wieking
CLERK

DATE FEB 23 2006


(BY) DEPUTY CLERK

MARY ANN BUCKLEY

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

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TO: (Name and address of defendant)

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Office of the Administrator
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
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Michael E. Wall, Natural Resources Defense Council, 111 Sutter Street, 20th Floor, San Francisco, CA
94104 Tel: 415.875.6100;

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

Richard W. Wieking

CLERK

DATE

FEB 23 2006
FEB 23 2006

MARY ANN BUCKLEY

(BY) DEPUTY CLERK

ORIGINAL
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06 FEB 23 PM 3:48

RICHARD E. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiffs PANNA and PCUN

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MMC

PESTICIDE ACTION NETWORK NORTH AMERICA
SAN FRANCISCO BAY AREA PHYSICIANS FOR
SOCIAL RESPONSIBILITY; PINEROS Y CAMPESINOS
UNIDOS DEL NOROESTE; and NATURAL
RESOURCES DEFENSE COUNCIL, INC.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY; and STEPHEN L. JOHNSON,
Administrator of the United States Environmental Protection
Agency,

Defendants.

Case No.

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Administrative Procedure Act
Case

06-1366

COMPLAINT

INTRODUCTION

1. Plaintiffs challenge a final rule published by defendant Environmental Protection Agency ("EPA") that unlawfully authorizes systematic testing of pesticides on human subjects. 71 Fed. Reg. 6138 (Feb. 6, 2006). The pesticide industry and others have conducted dozens of unethical and unscientific human studies. These include studies in which pregnant women and infants in a maternity ward, as well as sick children and men with liver disease, were intentionally exposed to the pesticide dichlorvos, which is listed as a possible human carcinogen by EPA. Such unethical studies result in no scientific gains but may cause significant harm to human health.

2. A stated goal of the pesticide industry human pesticide tests is to weaken pesticide safety standards by circumventing a safety factor otherwise used by EPA to extrapolate an estimated safe level of human exposure from the results of animal or other studies. As a result of EPA's unlawful rulemaking, the agency will rely on unethical and unscientific human pesticide tests to weaken regulatory standards.

3. Congress recently passed legislation that compelled agency rulemaking on this subject and required EPA to establish minimum ethical and scientific guidelines for human pesticide testing. *See* Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Public Law No. 109-54 ("Appropriations Act"). EPA's final rule violates section 201 of the Appropriations Act and additional restrictions on human pesticide testing codified in the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. §136j.

4. Plaintiffs seek declaratory and injunctive relief against defendants EPA and its Administrator, Stephen L. Johnson, for failing to comply with its statutory obligations to promulgate a final human testing rule consistent with specific ethical and scientific safeguards necessary to protect against abuse.

JURISDICTION

5. EPA's final human testing rule cites six different sources of statutory authority for its promulgation: Appropriations Act § 201; FIFRA §§ 3(a) & 25(a); Federal Food, Drug, and Cosmetic Act ("FFDCA") § 408(e)(1)(C); 5 U.S.C. § 301; and 42 U.S.C. § 300v-1(b).

6. This Court has jurisdiction over this action pursuant to 7 U.S.C. § 136n(a) (FIFRA); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (mandamus); 28 U.S.C. § 2201 (declaratory relief); 28 U.S.C. § 2202 (injunctive relief); and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

7. Plaintiffs have also filed petitions for review to challenge this final agency rulemaking in the appropriate United States Courts of Appeals, pursuant to the judicial review provision in the FFDCA, 21 U.S.C. §§ 346a(h)(1) & (h)(5). Plaintiffs Pesticide Action Network North America, San Francisco Bay Area Physicians for Social Responsibility, and Pineros y Campesinos Unidos del Noroeste have filed a petition for review in the Ninth Circuit, where each is located; plaintiff Natural Resources Defense Council, Inc., has filed a petition for review in the Second Circuit, where it is headquartered. Pursuant to 28 U.S.C. § 2112, the Judicial Panel on Multidistrict Litigation will transfer and consolidate the two petitions into one court chosen by lottery. Plaintiffs are filing this complaint as a protective matter, in the event that the Court of Appeals concludes that jurisdiction properly belongs in District Court.

VENUE

8. Venue in this Court is proper under 28 U.S.C. § 1391(e)(3), because plaintiffs Pesticide Action Network North America and San Francisco Bay Area Physicians for Social Responsibility reside and maintain their headquarters in the Northern District of California. Plaintiff Natural Resources Defense Council, Inc., also maintains offices in this judicial district. Defendant EPA also maintains office in this judicial district.

9. As further described below, Plaintiffs represent their members and their members' children who are exposed to pesticides, and who live and work, in the geographic area encompassed within the Northern District of California.

INTRADISTRICT ASSIGNMENT

10. Pursuant to Civ. L. R. 3-2, intradistrict assignment is proper in the San Francisco or Oakland Divisions. Plaintiff Pesticide Action Network North America is headquartered in San Francisco, California, and Plaintiff San Francisco Bay Area Physicians for Social Responsibility is headquartered in Berkeley, California. Plaintiff Natural Resources Defense Council, Inc. maintains an office in San Francisco. Plaintiffs have numerous members, adversely affected by EPA's unlawful final rule, who live in the counties encompassed by the San Francisco and Oakland Divisions of this Court.

PARTIES

11. Plaintiff Pesticide Action Network North American ("PANNA") is a San Francisco-based, non-profit organization that serves as an independent regional center of Pesticide Action Network International, a coalition of over 600 public interest organizations in more than 90 countries. For more than twenty years, PANNA has worked to replace hazardous, unnecessary pesticide use with healthier, ecologically sound pest management across the United States and around the world. PANNA provides scientific expertise, public education, and access to pesticide data and analysis, policy development, and other support to its approximately 225 member organizations in North America. PANNA has approximately 2700 individual members nationwide and has approximately 90 organizational members in California. PANNA's U.S. membership includes a number of groups who directly represent or advocate on behalf of farmworkers and whose membership includes farmworkers or persons living on or near farms who will be adversely affected by increased exposure to pesticides caused by Defendants' unlawful rulemaking. PANNA brings this action on its own behalf and on behalf of its members and its members' children.

12. Plaintiff San Francisco Bay Area Physicians for Social Responsibility ("SF-PSR") is a non-profit organization with approximately 2000 physicians and healthcare professionals in San Francisco and the surrounding region. SF-PSR is one of the oldest chapters of the national Physicians for Social Responsibility, an organization founded in 1961 to address and educate the medical community and the public about the links between nuclear weapons and human health,

1 and which expanded its work in the early 1990s to address various environmental health issues.
2 The organization counts among its members many leading and influential members of the
3 medical community. SF-PSR works to encourage health professionals to participate in creating a
4 sustainable and healthy environment by providing technical assistance and information on
5 human health and environmental issues to citizens groups, health care providers, educational
6 institutions, and public policy makers. The members of SF-PSR, and their patients, will be
7 harmed by EPA's unlawful rulemaking, both due to the likelihood that the rule will increase their
8 exposure to dangerous pesticides and because SF-PSR and its members will be forced to expend
9 scarce resources to combat the public health harms caused by the rulemaking. SF-PSR brings
10 this action on its own behalf and on behalf of its members, their children, and their patients.

11 13. Plaintiff Pineros y Campesinos Unidos del Noroeste ("PCUN") – Northwest
12 Treeplanters and Farmworkers United – is Oregon's union of farmworkers, nursery, and
13 reforestation workers, and Oregon's largest Latino organization. PCUN's fundamental goal is to
14 empower farmworkers to understand and take action against systematic exploitation and all of its
15 effects. To achieve this end, PCUN is involved in community and workplace organizing on many
16 different levels, including advocacy against the health threats of pesticide exposure. Founded in
17 1985 by 80 farmworkers, PCUN currently includes more than 5,000 registered members, 98% of
18 which are Mexican and Central American immigrants. PCUN brings this action on its own
19 behalf and on behalf of its members and its members' children.

20 14. Plaintiff Natural Resources Defense Council, Inc. ("NRDC") is a non-profit,
21 environmental membership organization with more than 550,000 members nationwide, including
22 more than 80,000 members in the State of California. NRDC maintains offices in San Francisco
23 and Los Angeles, in addition to offices in New York and Washington, D.C. NRDC's
24 institutional purposes include protection of public health and the environment, including
25 protecting its members and the public from the health risks associated with exposure to
26 pesticides. NRDC's membership and staff of lawyers, scientists, and other environmental
27 specialists have a long-standing interest in improving the regulation of pesticides and other toxic
28 chemical residues in food, air, and water. NRDC seeks to ensure that pesticide regulation is

1 protective of the public health and in compliance with governing statutes. NRDC has litigated
2 major cases seeking to require EPA to comply with its legal obligations to protect the public
3 from pesticides, and has actively participated in the development, enforcement, and reform of
4 pesticide laws and pesticide regulation for over two decades. NRDC brings this action on its
5 own behalf and on behalf of its members and its members' children.

6 15. Pesticides are specifically formulated to be toxic to living organisms. Many
7 pesticides used today are acutely toxic to people. Pesticides cause poisonings and deaths every
8 year in this country. Chronic health effects associated with pesticide exposure include
9 neurological disorders (such as Parkinson's disease, memory problems, reduced cognitive
10 functioning, and reduced coordination), reproductive toxicity (such as infertility, stillbirths, birth
11 defects such as cleft lip and palate, nervous system and musculoskeletal defects), developmental
12 delays (in infants and children), and cancer (such as brain tumors, leukemia, non-Hodgkin's
13 lymphoma, sarcoma, and Wilm's tumor).

14 16. The health of plaintiffs' members, their children, and their patients is placed at
15 risk by EPA's unlawful rulemaking. These individuals are exposed to unsafe levels of pesticides
16 on their food and in the places that they live, work, and play. Members of plaintiffs, and their
17 children and patients, eat food that has been contaminated with pesticide residues. Members of
18 plaintiffs are farmworkers or live near active farms, and their children are especially heavily
19 exposed to pesticides when these toxic chemicals are applied to fields near their homes, schools,
20 food and water sources, and locations where the children play. Plaintiffs' members suffer
21 physical, psychological, emotional, and economic injuries when pesticide exposure harms and
22 threatens harm to their children. EPA's rulemaking will increase these risks and harms. A goal
23 of much human pesticide testing is to weaken pesticide safety standards by circumventing a
24 safety factor that EPA would otherwise use to extrapolate an estimated safe level of human
25 exposure from the results of animal or other studies. As a result of EPA's unlawful rulemaking,
26 the agency will rely on unethical and unscientific human pesticide tests to weaken regulatory
27 standards. The declaratory and injunctive relief requested herein – vacating EPA's unlawful rule
28 and remanding to the agency with instructions to comply with applicable, health-protective

1 statutory mandates – would remedy these harms and would help to ensure that EPA sets more
2 protective regulatory standards concerning pesticides. Plaintiffs have an interest in having EPA
3 properly comply with its statutory mandates in a manner that protects human health, especially
4 the health of their members, children, and patients, from unsafe exposure to pesticides.

5 17. Defendant EPA is an agency of the United States charged with implementing
6 federal pesticide statutes. In the Appropriations Act, Congress directed EPA to publish a final
7 rule governing “third-party intentional dosing human toxicity studies for pesticides” within 180
8 days of August 2, 2005. The challenged final rule was promulgated pursuant to this directive.

9 18. Defendant Stephen L. Johnson is Administrator of EPA. Mr. Johnson is the chief
10 officer of EPA and is the federal official ultimately responsible for EPA’s administration and
11 implementation of the Appropriations Act, FIFRA, and the Administrative Procedure Act, 5
12 U.S.C. § 701 *et seq.* Mr. Johnson is sued in his official capacity.

13 BACKGROUND AND STATUTORY PROVISIONS

14 19. FIFRA, 7 U.S.C. §§ 136 - 136y, generally provides for the regulation of pesticide
15 use. *See, e.g.*, 7 U.S.C. § 136 (requiring a pesticide to be registered with EPA before it is sold in
16 the United States); 7 U.S.C. § 136a(c)(5) (establishing standards for pesticide registration). The
17 FFDCA authorizes EPA to set tolerances – *i.e.*, maximum allowable levels – for pesticide
18 residues in or on food. *See* 21 U.S.C. §§ 346a(b) & (c).

19 20. Congress has attempted to restrict human pesticide testing for decades. Congress
20 banned many pesticide human tests in 1972, based on serious concerns about industry pesticide
21 experiments. Testimony before a Senate Committee discussed evidence that the chemical
22 industry performed pesticide experiments “using farm workers as human guinea pigs,” and
23 alleged that economic duress and inadequate translations for Spanish-speaking farm workers
24 prevented legitimate informed consent. Hearings on H.R. 10729, 92d Cong., 2d Sess., 318, 318-
25 40 (1972). The Senate cited this testimony in amending FIFRA to prohibit involuntary human
26 testing. S.Rep. No. 92-970 (1972), *reprinted in* 1972 U.S.C.C.A.N. 4111. FIFRA therefore bans
27 using “any pesticide in tests on human being unless such human beings (i) are fully informed of
28 the nature and purposes of the test and of any physical and mental health consequences which are

1 reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test.” 7 U.S.C.
2 §136j(a)(2)(P).

3 21. In 1996, Congress unanimously enacted and the President signed into law the
4 Food Quality Protection Act (“FQPA”), Pub. L. No. 104-170, 110 Stat. 1486 (1996). The statute
5 was largely based on a 1993 National Academy of Sciences (“NAS”) report, *Pesticides in the*
6 *Diets of Infants and Children*. See H.Rep. 104-669, pt. 2, at 43 (1996). The NAS found that
7 EPA’s approach to regulating pesticides failed to address the unique vulnerabilities of infants
8 and children to the adverse effects of pesticides – particularly neurotoxins – because children
9 may be both more susceptible and more exposed to toxic chemicals. *Id.* Thus, the FQPA
10 generally requires EPA to set the safe level of pesticide exposure for kids at one-tenth the safe
11 level for adults. 21 U.S.C. § 346a(b)(2).

12 22. The enactment of FQPA’s child health protections triggered a wave of pesticide-
13 and chemical-industry funded human pesticide tests intended to weaken pesticide regulations.
14 Pesticide manufacturers conduct human tests in an effort to eliminate a tenfold “interspecies
15 safety factor” that EPA applies to extrapolate from animal toxicity data to assess risks to humans.
16 Eliminating the tenfold interspecies safety factor would help negate Congress’ new tenfold
17 children’s safety factor and reduce the protectiveness of pesticide safety standards throughout
18 this country. By 1998, with industry conducting additional human testing to minimize the
19 impact of the tougher new health standards of the FQPA, EPA announced that it was “deeply
20 concerned” about human studies intended “to avoid more protective results.” Many of the
21 human experiments conducted by the pesticide and chemical industry have not been
22 scientifically valid but could be considered by EPA under the challenged rule.

23 23. In 2005, Congress acted again to limit EPA consideration of human pesticide
24 tests. In legislation providing appropriated funds for EPA and other federal agencies, Congress
25 ordered EPA not to “accept, consider, or rely on third-party intentional dosing human toxicity
26 studies for pesticides” until EPA issued a protective final rule on the subject. Public Law No.
27 109-54, § 201. Congress further ordered that: “Such rule shall not permit the use of pregnant
28 women, infants or children as subjects; [and] shall be consistent with the principles proposed in

1 the 2004 report of the National Academy of Sciences on intentional human dosing and the
2 principles of the Nuremberg Code with respect to human experimentation.” *Id.* Congress’ clear,
3 overriding concern was to protect human test subjects and strictly limit the circumstances, if any,
4 under which EPA could consider or rely on intentional human tests conducted by the pesticide
5 industry.

6 24. The Nuremberg Code, referenced by Congress in the Appropriations Act, was
7 promulgated by American judges serving on the United States Military Tribunal for the Doctors’
8 Trial at Nuremberg following World War II, and established ten basic principles for human
9 research. The National Academy of Sciences (“NAS”) Report was published in 2004, in
10 response to an EPA request for advice on this topic. The NAS Report contains seventeen
11 recommendations to EPA regarding human testing.

12 25. EPA published a proposed human testing rule for public comment at 70 Fed. Reg.
13 53838 (Sept. 12, 2005). EPA published the challenged final rule at 71 Fed. Reg. 6138 (Feb. 6,
14 2005).

15 THE CHALLENGED AGENCY ACTION

16 26. EPA’s final human testing rule violates section 201 of the Appropriations Act
17 because, *inter alia*: (A) the rule improperly permits intentional human pesticide testing on
18 pregnant women, infants, and children; (B) the rule violates Nuremberg Code and NAS Report
19 principles requiring fully informed consent of the experimental test subject; (C) the rule includes
20 none of the minimum standards for scientific acceptability required by Congress; (D) EPA is
21 adopting an unlawful standard for relying on old human tests under the rule; and (E) EPA
22 disregards the mandate of Congress by requiring only “substantial compliance” with the
23 standards in the rule.

24 27. EPA’s final human testing rule also violates FIFRA § 12(a)(2)(P), 7 U.S.C. §
25 136j(a)(2)(P), which forbids use of any pesticide “in tests on human beings unless such human
26 beings (i) are fully informed . . . and (ii) freely volunteer . . .” The final human testing rule
27 unlawfully permits intentional human tests in circumstances where informed, voluntary consent
28 of the test subject is not obtained.

1 **CLAIMS FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF – APPROPRIATIONS ACT**

3 (Agency Action Contrary to Law)

4 28. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
5 herein.

6 29. The Appropriations Act directs EPA to promulgate a final human testing rule that
7 forbids the use of pregnant women, infants, or children in intentional human tests, and that is
8 consistent with the principles of the Nuremberg Code and the 2004 NAS Report. The challenged
9 EPA rule allows the use of pregnant women, infants, and children in intentional human tests, and
10 contravenes the principles of the Nuremberg Code and the 2004 NAS Report. This challenged
11 EPA rule is arbitrary and capricious agency action, an abuse of discretion, and agency action not
12 in accordance with law. 5 U.S.C. § 706(2)(A).

13 30. EPA's human testing rule should be vacated, and EPA should be compelled to
14 promulgate a final rule consistent with the Appropriations Act's statutory directive.

15 **SECOND CLAIM FOR RELIEF – FIFRA**

16 (Agency Action Contrary to Law)

17 31. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth
18 herein.

19 32. FIFRA forbids use of any pesticide "in tests on human beings unless such human
20 beings (i) are fully informed . . . and (ii) freely volunteer." 7 U.S.C. § 136j(a)(2)(P). EPA's final
21 human testing rule explicitly approves use of pesticides in tests on human beings in
22 circumstances where "fully informed" and "freely volunteer[ed]" consent of the test subject is
23 not obtained, in violation of FIFRA. EPA's final human testing rule is arbitrary and capricious
24 agency action, an abuse of discretion, and agency action not in accordance with law. 5 U.S.C. §
25 706(2)(A).

26 33. EPA's human testing rule should be vacated, and EPA should be compelled to
27 promulgate a final rule consistent with FIFRA's statutory directive.
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A. Declaring that EPA's final rule authorizing the use of human test subjects in
side experiments violates Section 201 of the Appropriations Act, Public Law No. 109-54,
A, 7 U.S.C. § 136j, and is arbitrary, capricious, and contrary to law;

C. Awarding Plaintiffs their costs and reasonable attorneys' fees in this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other authority; and

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Dated: February 23, 2006

Respectfully submitted,

NATURAL RESOURCES DEFENSE COUNCIL, INC.

By:

MICHAEL E. WALL (Cal. Bar No. 170238)
Natural Resources Defense Council, Inc.
111 Sutter Street, 20th Floor
San Francisco, CA 94104
Attorneys for Plaintiffs

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

I.(a) PLAINTIFFS

Pesticide Action Network North America; San Francisco Bay Area Physicians for Social Responsibility; Pineros y Campesinos Unidos Del Noroeste; and Natural Resources Defense Council, Inc.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Francisco, CA

DEFENDANTS

United States Environmental Protection Agency; and Stephen L. Johnson, Administrator

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Michael E. Wall, Natural Resources Defense Council, Inc.; 111 Sutter St., 20th Fl., San Francisco, CA 94104 Tel: 415.875.6100

ATTORNEYS (IF KNOWN)

Keith Matthews, U.S. EPA Headquarters, 1200 Pennsylvania Ave., NW, Mail Code 2333A, Washington, DC 20460 Tel: 202.564.5587

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

☐ 1 U.S. Government Plaintiff

☐ 3 Federal Question
(U.S. Government Not a Party)

☒ 2 U.S. Government Defendant

☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State ☐ 1 ☐ 1

Citizen of Another State ☐ 2 ☐ 2

Citizen or Subject of a Foreign Country ☐ 3 ☐ 3

Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4

Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5

Foreign Nation ☐ 6 ☐ 6

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

☒ Original Proceeding

☐ Removed from State Court

☐ Remanded from Appellate Court

☐ Reinstated or Reopened

☐ Transferred from Another district (specify)

☐ Multidistrict Litigation

☐ Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT

- ☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

TORTS

PERSONAL INJURY

- ☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault Libel & Slander
☐ 330 Federal Employers Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury

PERSONAL INJURY

- ☐ 362 Personal Injury Med Malpractice
☐ 365 Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY

- ☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

FORFEITURE/PENALTY

- ☐ 610 Agriculture
☐ 620 Other Food & Drug
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 630 Liquor Laws
☐ 640 RR & Truck
☐ 650 Airline Regs
☐ 660 Occupational Safety/Health
☐ 690 Other

LABOR

- ☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt Relations
☐ 730 Labor/Mgmt Reporting & Disclosure Act
☐ 740 Railway Labor Act
☐ 790 Other Labor Litigation
☐ 791 Empl.Ret. Inc. Security Act

BANKRUPTCY

- ☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS

- ☐ 820 Copyrights
☐ 830 Patent
☐ 840 Trademark

SOCIAL SECURITY

- ☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (406(g))
☐ 864 SSID Title XVI
☐ 866 RSI (406(g))

FEDERAL TAX SUITS

- ☐ 870 Taxes (US Plaintiff or Defendant)
☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES

- ☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce/ICC Rates/etc.
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 810 Selective Service
☐ 850 Securities/Commodities/Exchange
☐ 875 Customer Challenge 12 USC 3410
☐ 891 Agricultural Acts
☐ 892 Economic Stabilization Act
☒ 893 Environmental Matters
☐ 894 Energy Allocation Act
☐ 895 Freedom of Information Act
☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 950 Constitutionality of State Statutes
☐ 890 Other Statutory Actions

REAL PROPERTY

- ☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

CIVIL RIGHTS

- ☐ 441 Voting
☐ 442 Employment
☐ 443 Housing
☐ 444 Welfare
☐ 440 Other Civil Rights
☐ 445 Amer w/ disab - Empl
☐ 446 Amer w/ disab - Other
☐ 480 Consumer Credit
☐ 490 Cable/Satellite TV

PRISONER PETITIONS

- ☐ 510 Motion to Vacate Sentence Habeas Corpus:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Challenge to EPA human testing rule, published at 71 Fed. Reg. 6138 (Feb. 6, 2006). The rule violates Section 201 of the Appropriations Act, Public Law No. 109-54; FIFRA, 7 U.S.C. § 136j; and the standards of the Administrative Procedure Act, 5 U.S.C. § 701(2).

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ ☐ CHECK YES only if demanded in complaint:

UNDER F.R.C.P. 23 Injunction and Declaratory Relief JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)

(PLACE AND "X" IN ONE BOX ONLY)

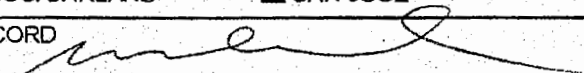
☒ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE

23 Feb 2006

SIGNATURE OF ATTORNEY OF RECORD



INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44
Authority For Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases. Date and Attorney Signature.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PESTICIDE ACTION NETWORK,

Plaintiff (s),

v.

U.S ENVIRONMENTAL PROTECTION,
Defendant(s).

ORIGINAL
FILED
FEB 23 PM 3:49
No. C 06-01366-MMC
E-Filed
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**ORDER SETTING INITIAL CASE
MANAGEMENT CONFERENCE
AND ADR DEADLINES**

IT IS HEREBY ORDERED that this action is assigned to the Honorable Maxine M. Chesney. When serving the complaint or notice of removal, the plaintiff or removing defendant must serve on all other parties a copy of this order, the handbook entitled "Dispute Resolution Procedures in the Northern District of California" and all other documents specified in Civil Local Rule 4-2. Counsel must comply with the case schedule listed below unless the Court otherwise orders.

IT IS FURTHER ORDERED that this action is assigned to the Alternative Dispute Resolution (ADR) Multi-Option Program governed by ADR Local Rule 3. Counsel and clients shall familiarize themselves with that rule and with the handbook entitled "Dispute Resolution Procedures in the Northern District of California."

CASE SCHEDULE -ADR MULTI-OPTION PROGRAM

| Date | Event | Governing Rule |
|-----------|---|--|
| 2/23/2006 | Complaint filed | |
| 5/5/2006 | Last day to: <ul style="list-style-type: none">• meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan• file Joint ADR Certification with Stipulation to ADR Process or Notice of Need for ADR Phone Conference | <u>FRCivP 26(f) & ADR L.R. 3-5</u> <u>Civil L.R. 16-8</u> |
| 5/19/2006 | Last day to complete initial disclosures or state objection in Rule 26(f) Report, file Case Management Statement and file/serve Rule 26(f) Report | <u>FRCivP 26(a) (1)</u> <u>Civil L.R. 16-9</u> |
| 5/26/2006 | CASE MANAGEMENT CONFERENCE (CMC) in Ctrm 7, 19th Floor at 10:30 AM | <u>Civil L.R. 16-10</u> |

Plaintiff(s),)
)
)
) NO. C- MMC
)
 vs.)
)
) CASE MANAGEMENT
) CONFERENCE ORDER
)
 Defendant(s),)
)
)

Any request to reschedule the above dates should be made in writing, and by stipulation, if possible, not less than ten days before the conference date. Good cause must be shown.

The parties should be prepared to address and resolve at the Case Management Conference the following: setting the date and the estimated length of the trial; setting the date for discovery cutoff; setting the date to designate experts and other witnesses; and setting the date for the pretrial conference.

Other agenda matters which the Court will address at the Case Management Conference include the following:

1. Does the Court have subject matter jurisdiction over all of the plaintiffs' claim(s) and defendants' counter-claim(s)? What is the basis of that jurisdiction? Are all the parties subject to the Court's jurisdiction? Do any parties remain to be served?
2. What are the factual and legal bases for plaintiff's claims and defendant's defenses? Defendant's counter-claims and plaintiff's defenses to the counterclaims?
3. What are the factual and legal issues genuinely in dispute?
4. What are the issues that can be narrowed by agreement or by motions? Are there dispositive or partially dispositive issues appropriate for decision on motion?
5. What are the motions anticipated by the parties?
6. What relief does plaintiff seek? What is the amount of damages sought by plaintiff's claim(s)? What is the amount of damages sought by defendant's counterclaim(s)? How are the damages computed?
7. What discovery does each party intend to pursue? Can discovery be limited in any manner? Are there any alternative methods available to obtain the necessary information? Should a discovery order and conference be entered pursuant to Fed.R.Civ.P 26(f)?
8. Is this case suitable for reference to a binding arbitration, to a Special Master, or to a Magistrate Judge for trial? Is the case suitable for reference to the Judicial Panel on Multidistrict Litigation?
9. Will this case be tried by a jury? What is the anticipated length of trial? Is it possible to reduce the length of trial by stipulation, use of summaries or statements, or other expedited means of presenting evidence? Is it feasible and desirable to bifurcate issues for trial?

10. Are there related cases pending before other Judges of this Court? See Civil L.R. 3-12.

11. If a class action, how and when will the class(es) be certified?

12. What are the earliest reasonable dates for discovery cutoff, pretrial conference and trial?

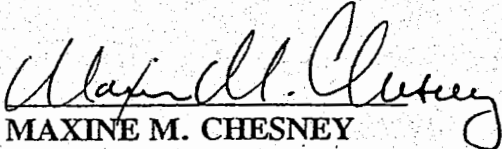
13. What are the prospects for settlement? Does any party wish to have a settlement conference with another Judge or Magistrate Judge? How can settlement efforts be assisted? See A.D.R. L.R. 7.

14. Such other matters as any party considers conducive to the just, speedy and inexpensive determination of this action.

Failure to comply with this Order or the Local Rules of this Court may result in sanctions. See Fed.R.Civ.P. 16(f), Civil L.R. 1-4.

IT IS SO ORDERED.

Dated: October 9, 2002.


MAXINE M. CHESNEY
United States District Judge

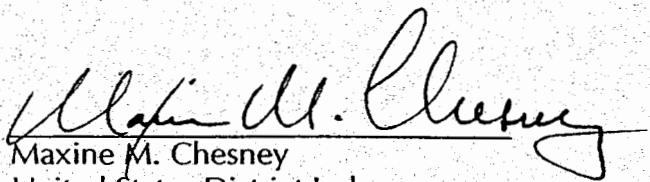
**STANDING ORDERS FOR CIVIL CASES
ASSIGNED TO THE HONORABLE MAXINE M. CHESNEY**

1. Counsel shall consult and comply with all provisions of the Local Rules relating to continuance, motions, briefs, and all other matters, unless superseded by these Standing Orders.
2. **Electronic Case Filing - Lodging Hard Copies for Chambers**

In all cases that have been assigned to the Electronic Case Filing Program, the parties are required to provide for use in chambers one paper copy of each document that is filed electronically. The paper copy of each such document shall be delivered no later than noon on the day after the document is filed electronically. The paper copy shall be marked "**Chambers Copy**" and shall be delivered to the Clerk's Office in an envelope clearly marked with the judge's name, case number, and "E-Filing Chambers Copy."
3. **Scheduling Days:**
 - a. Criminal Law and Motion Calendar is conducted on Wednesdays at 2:30 p.m.
 - b. Civil Law and Motion Calendar is conducted on Fridays at 9:00 a.m.
 - c. Case Management Conferences are conducted on Fridays at 10:30 a.m., with order of call determined by the Court.
 - d. Pretrial conferences are generally conducted on Tuesday afternoons at 3:00 p.m.
 - e. Counsel need not reserve a hearing date for motions, but noticed dates may be reset as the Court's calendar requires.
4. **Proposed Orders Required:** Each party filing or opposing a motion shall also serve and file a proposed order which sets forth the relief or action sought and a short statement of the rationale of decision, including citation of authority, that the party requests the Court to adopt.
5. **Discovery:** Discovery motions will be referred to a Magistrate Judge.
6. **Procedural Matters:** Parties seeking to continue hearings, request special status conferences, modify briefing schedules, or make other procedural changes shall submit a signed stipulation and proposed order, or, if stipulation is not possible, an administrative request in accordance with Civil Local Rule 7-11. *In either case, no changes in the Court's schedule or procedures shall be made except by signed order of the Court and only upon a showing of good cause.*
7. **Service of Standing Orders:** Plaintiff is directed to serve copies of these standing orders at once upon all parties to this action and upon those subsequently joined, in accordance with the provisions of Rules 4 and 5, Federal Rules of Civil Procedure, and to file with the Clerk of the Court a certificate reflecting such service.

IT IS SO ORDERED.

Dated: April 20, 2005


Maxine M. Chesney
United States District Judge

APPENDIX A - JOINT CASE MANAGEMENT STATEMENT AND PROPOSED ORDER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff(s),

v.

Defendant(s).

CASE NO.

JOINT CASE MANAGEMENT STATEMENT
AND PROPOSED ORDER

The parties to the above-entitled action jointly submit this Case Management Statement and Proposed Order and request the Court to adopt it as its Case Management Order in this case.

DESCRIPTION OF THE CASE

1. A brief description of the events underlying the action:
2. The principal factual issues which the parties dispute:
3. The principal legal issues which the parties dispute:
4. The other factual issues [e.g. service of process, personal jurisdiction, subject matter jurisdiction or venue] which remain unresolved for the reason stated below and how the parties propose to resolve those issues:
5. The parties which have not been served and the reasons:
6. The additional parties which the below-specified parties intend to join and the intended time frame for such joinder:
7. The following parties consent to assignment of this case to a United States Magistrate Judge for [court or jury] trial:

ALTERNATIVE DISPUTE RESOLUTION

8. [Please indicate the appropriate response(s).]

- ☐ The case was automatically assigned to Nonbinding Arbitration at filing and will be ready for the hearing by (date) _____.
- ☐ The parties have filed a Stipulation and Proposed Order Selecting an ADR process (specify process): _____.
- ☐ The parties filed a Notice of Need for ADR Phone Conference and the phone conference was held on or is scheduled for _____.
- ☐ The parties have not filed a Stipulation and Proposed Order Selecting an ADR process and the ADR process that the parties jointly request [or a party separately requests] is _____.

9. Please indicate any other information regarding ADR process or deadline.

DISCLOSURES

10. The parties certify that they have made the following disclosures *[list disclosures of persons, documents, damage computations and insurance agreements]*:

DISCOVERY

11. The parties agree to the following discovery plan *[Describe the plan e.g., any limitation on the number, duration or subject matter for various kinds of discovery; discovery from experts; deadlines for completing discovery]*:

TRIAL SCHEDULE

12. The parties request a trial date as follows:

13. The parties expect that the trial will last for the following number of days:

Dated: _____

[Typed name and signature of counsel.]

Dated: _____

[Typed name and signature of counsel.]

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

[The Court may wish to make additional orders, such as:

- a. Referral of the parties to court or private ADR process;*
- b. Schedule a further Case Management Conference;*
- c. Schedule the time and content of supplemental disclosures;*
- d. Specially set motions;*
- e. Impose limitations on disclosure or discovery;*
- f. Set time for disclosure of identity, background and opinions of experts;*
- g. Set deadlines for completing fact and expert discovery;*
- h. Set time for parties to meet and confer regarding pretrial submissions;*
- i. Set deadline for hearing motions directed to the merits of the case;*
- j. Set deadline for submission of pretrial material;*
- k. Set date and time for pretrial conference;*
- l. Set a date and time for trial.]*

Dated: _____

UNITED STATES DISTRICT/MAGISTRATE JUDGE

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 NOTICE OF AVAILABILITY OF MAGISTRATE JUDGE
5 TO EXERCISE JURISDICTION
6

7 In accordance with the provisions of Title 28, U.S.C., § 636(c), you are hereby notified
8 that a United States magistrate judge of this district is available to exercise the court's jurisdiction
9 and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a
10 final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if
11 all parties voluntarily consent.

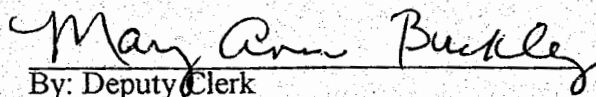
12 You may, without adverse substantive consequences, withhold your consent, but this will
13 prevent the court's jurisdiction from being exercised by a magistrate judge.

14 An appeal from a judgment entered by a magistrate judge may be taken directly to the
15 United States court of appeals for this judicial circuit in the same manner as an appeal from any
16 other judgment of a district court.

17 Copies of the Form for the "Consent to Exercise of Jurisdiction by a United States
18 Magistrate Judge" are available from the clerk of court.

19 The plaintiff or removing party shall serve a copy of this notice upon all other parties to
20 this action pursuant to Federal Rules of Civil Procedure 4 and 5.

21
22 FOR THE COURT
23 RICHARD W. WIEKING, CLERK

24 
25 By: Deputy Clerk

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) _____

as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) _____ District of _____ and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

- A — Name of individual defendant (or name of officer or agent of corporate defendant)
- B — Title, or other relationship of individual to corporate defendant
- C — Name of corporate defendant, if any
- D — District
- E — Docket number of action
- F — Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

TO: _____
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I acknowledge receipt of your request that I waive service of a summons in the action of

_____, which is case number _____
(CAPTION OF ACTION) (DOCKET NUMBER)

in the United States District Court for the _____ District of

_____. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____, (DATE REQUEST WAS SENT) or within 90 days after that date if the request was sent outside the United States.

DATE

SIGNATURE

Printed/Typed Name: _____

As _____ of _____
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

U.S. District Court Northern California**ECF Registration Information Handout**

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Local Rule 5-4 and General Order 45. This means that you **must** (check off the boxes ☒ when done):

- ☐ **1) Register** to become an efiler by filling out the efiler application form. Follow ALL the instructions on the form carefully. If you are already registered in this district, do not register again, your registration is valid for life on all ECF cases in this district.
- ☐ **2) Serve this** ECF Registration Information Handout on **all** parties in the case along with the complaint, or for removals, the removal notice. DO NOT serve the efiler application form, just this handout.
- ☐ **3) Email** (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.
- ☐ **4) PACER** (Public Access to Court Electronic Records) access is mandatory to access dockets and documents. If your firm already has a PACER account, please use that - it is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.psc.uscourts.gov> or call (800) 676-6856.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

All subsequent papers in this case shall be filed electronically.

ECF registration forms, interactive tutorials and complete instructions for efilg may be found on the ECF website: <http://ecf.cand.uscourts.gov>

Submitting Initiating Documents

PDF versions of all the initiating documents originally submitted to the court (Complaint or Notice of Removal, Civil Cover Sheet, exhibits, etc.) must be **emailed (not efiled)** to the **PDF email box for the presiding judge** (not the referring judge, if there is one) **within 10 (ten) business days** of the opening of your case. For a complete list of the email addresses, please go to: <http://ecf.cand.uscourts.gov> and click on **[Judges]**.

U.S. District Court Northern California

Submitting Initiating Documents (continued)

You must include the case number and judge's initials in the subject line of all relevant emails to the court. You do not need to wait for your registration to email these documents.

These documents must be emailed instead of e-filed to prevent duplicate entries in the ECF system. All other documents must be e-filed from then on.

Converting Documents to PDF

Conversion of a word processing document to a PDF file is required before any documents may be submitted to the Court's electronic filing system.

Instructions for creating PDF files can be found at the ECF web site:

<http://ecf.cand.uscourts.gov>, and click on **[FAQ]**.

Email Guidelines

When sending an email to the court, the subject line of the email **must** contain the **case number**, **judge's initials** and the **type of document(s)** you are sending, and/or the topic of the email.

Examples:

The examples below assume your case number is 03-09999 before the Honorable Charles R. Breyer:

| Type of Document | Email Subject Line Text |
|--|--------------------------------------|
| Complaint Only | 03-09999 CRB Complaint |
| Complaint and Notice of Related Case | 03-09999 CRB Complaint, Related Case |
| Complaint and Motion for Temporary Restraining Order | 03-09999 CRB Complaint, TRO |

Questions

Almost all questions can be answered in our **FAQs** at **<http://ecf.cand.uscourts.gov>**, please check them first.

You may also email the ECF Help Desk at ECFhelpdesk@cand.uscourts.gov or call the toll-free ECF Help Desk number at: (866) 638-7829.

The ECF Help Desk is staffed Mondays through Fridays from 9:00am to 4:00pm Pacific time, excluding court holidays.

WELCOME TO THE U.S. DISTRICT COURT, SAN FRANCISCO
OFFICE HOURS: 9:00 A.M. TO 4:00 P.M.
(415) 522-2000
OUR WEBSITE: www.cand.uscourts.gov

IN ADDITION TO THE LOCAL RULES, THE FOLLOWING GUIDELINES HAVE BEEN PROVIDED TO ENSURE THAT THE FILING PROCESS IS ACCOMPLISHED WITH EASE AND ACCURACY. FOR ADDITIONAL INFORMATION OR ASSISTANCE, PLEASE CALL THE ABOVE NUMBER DURING OFFICE HOURS.

1. Documents are to be filed in the Clerk's Office at the location of the chambers of the judge to whom the action has been assigned. We do not accept filings for cases assigned to judges or magistrate judges in the Oakland or San Jose division, per Civil L.R. 3-2(b).
2. This office will retain the original plus one copy of most documents submitted. We will conform as many copies as you bring for your use. Related cases require an extra copy for each related action designated.
3. The copy retained goes directly to the assigned Judge. Courtesy copies, or instructions for couriers to deliver a copy directly to chambers are inappropriate, unless you have been instructed to do so by court order.
4. In order to facilitate the file stamping process, each original document should be submitted on top of its copies. In other words, group like documents together--as opposed to a set of originals and separate sets of copies.
5. The case number must indicate whether it is a civil or criminal matter by the inclusion of **C** or **CR** at the beginning of the number. Miscellaneous and foreign judgment matters should also be indicated with initials **MISC** or **FJ** at the end of the case number.
6. The case number must include the initials of the judge and/or magistrate judge followed by the letters designating the case Arbitration (**ARB**), Early Neutral Evaluation (**ENE**) or Mediation (**MED**)--if assigned to one of those programs.
7. The document caption should include the appropriate judge or magistrate judge involved in a particular matter or before whom an appearance is being made. This is especially important when submitting Settlement Conference Statements.
8. Documents are to be stapled or acco-fastened at the top. Backings, bindings and covers are not required. Two holes punched at the top of the original document will facilitate processing.

9. Appropriately sized, stamped, self-addressed return envelopes are to be included with proposed orders or when filing documents by mail.
10. Proofs of service should be attached to the back of documents. If submitted separately, you must attach a pleading page to the front of the document showing case number and case caption.
11. There are no filing fees once a case has been opened.
12. New cases must be accompanied by a completed and signed Civil Cover Sheet, the filing fee or fee waiver request form and an original plus **two** copies of the complaint and any other documents. For Intellectual Property cases, please provide an original plus **three** copies of the complaint. Please present new cases for filing before 3:30 p.m., as they take a considerable amount of time to process.
13. Copies of forms may be obtained at no charge. They may be picked up in person from the Clerk's Office forms cabinet or with a written request accompanied by an appropriately sized, stamped, self-addressed envelope for return. In addition, copies of the Local Rules may be obtained, free of charge, in the Clerk's Office or by sending a written request, along with a self-addressed, 10" x 14" return envelope, stamped with \$ 3.95 postage to: Clerk, U.S. District Court, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102.
14. Two computer terminals which allow public access to case dockets and one terminal with information regarding files at the Federal Records Center (FRC) are located in the reception area of the Clerk's Office. Written instructions are posted by the terminals. Outside of the Clerk's Office, electronic access to dockets is available through PACER. To obtain information or to register call 1-800-676-6851.
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16. The Clerk's Office can only accept payment by **exact change or check** made payable to Clerk, U.S. District Court. No change can be made for fees or the public copy machine.
17. Two pay copy machines are located in the file viewing room for public use, at fifteen cents (\$.15) per page. Copy cards may be purchased at the snack bar on the first floor. Orders for copywork may be placed through Eddie's Document Retrieval by phoning 415-317-5556. Arrangements may be made to bring in a personal copier by calling the Clerk's Office in advance.

18. We have a drop box for filing when the Clerk's Office is closed. Please see attached for availability and instructions.

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SAN FRANCISCO MAGISTRATE JUDGES

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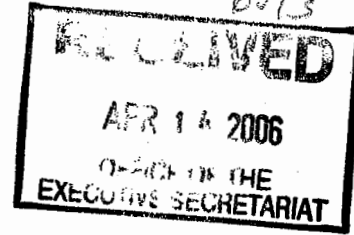
OAKLAND MAGISTRATE JUDGE

WDB

4/17

8:40 08 PA1

MICHAEL E. WALL (Cal Bar No. 170238)
Natural Resources Defense Council, Inc.
111 Sutter Street, 20th Floor
San Francisco, CA 94104
Tel: 415.875.6100; Fax: 415.875.6161
mwall@nrdc.org
Attorneys for Plaintiffs



JAN HASSELMAN (WSB #29107), Admission *Pro Hac Vice* Pending
PATTI GOLDMAN (WSB #24426), Admission *Pro Hac Vice* Pending
Earthjustice
705 Second Avenue, Suite 203
Seattle, Washington 98104
Tel: 206.343.7340; Fax: 206.343.1526
jhasselman@earthjustice.org; pgoldman@earthjustice.org
Attorneys for Plaintiffs PANNA and PCUN

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

PESTICIDE ACTION NETWORK NORTH AMERICA;
SAN FRANCISCO BAY AREA PHYSICIANS FOR
SOCIAL RESPONSIBILITY; PINEROS Y CAMPESINOS
UNIDOS DEL NOROESTE; and NATURAL
RESOURCES DEFENSE COUNCIL, INC.,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY; and STEPHEN L. JOHNSON,
Administrator of the United States Environmental Protection
Agency,

Defendants.

Case No. C. 06-01366 MMC

**NOTICE OF PENDENCY
OF OTHER ACTION OR
PROCEEDING**

Administrative Procedure Act
Case

1 **NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING**

2 Pursuant to Civ. L.R. 3-13, the plaintiffs in this action hereby provide notice of the
3 pendency of other actions or proceedings.

4 (1) The plaintiffs have also filed petitions for review, in two courts of appeals, to
5 challenge the final rule of the U.S. Environmental Protection Agency ("EPA") entitled
6 *Protections for Subjects in Human Research*, 71 Fed. Reg. 6138 (Feb. 6, 2006). This is the same
7 final rule challenged in the Complaint in this action.

8 (2) The petitions for review filed by plaintiffs are styled:

9 (A) *Pesticide Action Network North America v. United States Environmental*
10 *Protection Agency*, No. 06-71062 (9th Cir.). This petition for review was filed in the
11 U.S. Court of Appeals for the Ninth Circuit. The Judicial Panel on Multidistrict
12 Litigation recently ordered this petition transferred to the U.S Court of Appeals for the
13 Second Circuit and consolidated with the petition, already filed in that Court, that is cited
14 immediately below.

15 (B) *Natural Resources Defense Council v. United States Environmental*
16 *Protection Agency*, No. 06-0820-ag (2d Cir.). This petition for review was filed in the
17 U.S. Court of Appeals for the Second Circuit, and remains pending in that Court,
18 following a consolidation order issued by the Judicial Panel on Multidistrict Litigation.

19 (3) Brief description of other action and of transfer issues:

20 (A) The pending petitions for review challenge the same final EPA rule that is
21 the subject of the Complaint in the present case. As stated in the Complaint in this case:

22 EPA's final human testing rule cites six different sources of statutory
23 authority for its promulgation: Appropriations Act § 201; FIFRA §§ 3(a)
24 & 25(a); Federal Food, Drug, and Cosmetic Act ("FFDCA") § 408(e)(1)(C); 5
 U.S.C. § 301; and 42 U.S.C. § 300v-1(b).

25 * * *

26 Plaintiffs have also filed petitions for review to challenge this final agency
27 rulemaking in the appropriate United States Courts of Appeals, pursuant to the
28 judicial review provision in the FFDCA, 21 U.S.C. §§ 346a(h)(1) & (h)(5).

1 Plaintiffs Pesticide Action Network North America, San Francisco Bay Area
2 Physicians for Social Responsibility, and Pineros y Campesinos Unidos del
3 Noroeste have filed a petition for review in the Ninth Circuit, where each is
4 located; plaintiff Natural Resources Defense Council, Inc., has filed a petition for
5 review in the Second Circuit, where it is headquartered. Pursuant to 28 U.S.C. §
6 2112, the Judicial Panel on Multidistrict Litigation will transfer and consolidate
7 the two petitions into one court chosen by lottery. Plaintiffs are filing this
8 complaint as a protective matter, in the event that the Court of Appeals concludes
9 that jurisdiction properly belongs in District Court.

10 Compl., ¶ 5-7.

11 (B) The Judicial Panel on Multidistrict Litigation recently ordered the above-cited
12 petition filed in the Ninth Circuit transferred to the Second Circuit and consolidated with the
13 petition filed in the Second Circuit. Plaintiffs anticipate seeking a stay of this district court
14 litigation while those petitions for review are litigated in the Second Circuit.

15 April 5, 2006

16 Respectfully Submitted,

17 NATURAL RESOURCES DEFENSE COUNCIL

18 By: 

19 MICHAEL E. WALL (Cal. Bar No. 170238)
20 Natural Resources Defense Council, Inc.
21 111 Sutter Street, 20th Floor
22 San Francisco, CA 94104
23 Attorneys for Plaintiffs
24 Tel: 415.875.6100 x162; Fax: 415.875.6161
25 mwall@nrdc.org

26 Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee in the San Francisco Office of the
3 Natural Resources Defense Council, 111 Sutter Street, 20th Floor, San Francisco, CA, 94104; is a
4 person of such age and discretion to be competent to serve papers; and that on April 5, 2006 she
5 served copies of the attached:

6 • **NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING**

7 by causing said copies to be placed in a prepaid or postpaid envelope addressed to the persons
8 hereinafter named, at the places and addresses stated below, which are the last known addresses,
9 and by either delivering said envelope to Federal Express for overnight delivery or depositing
10 said envelope and contents in the United States Mail at San Francisco, California, or by facsimile
11 or hand delivery, as stated below:

12 **Via U.S. First Class Mail:**

13 Stephen L. Johnson
14 United States Environmental Protection Agency
15 Office of the Administrator
16 Ariel Rios Building
17 1200 Pennsylvania Avenue, N.W.
18 Washington, DC 20460

19 Civil Process Clerk
20 United States Attorney's Office
21 450 Golden Gate Avenue, 11th Floor
22 San Francisco, CA 94102

23 U.S. Environmental Protection Agency
24 c/o General Counsel, Ann R. Klee
25 Office of General Counsel
26 1200 Pennsylvania Avenue, N.W. (2310A)
27 Washington, DC 20460

28 Alberto R. Gonzales, Attorney General of the U.S.
29 U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Alan D. Greenberg
U.S. Department of Justice
999 18th Street, Suite 945
Denver, CO 80202

1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3
4 Dated: April 5, 2006



5 Erika Brekke
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WELCOME TO THE U.S. DISTRICT COURT, SAN FRANCISCO
OFFICE HOURS: 9:00 A.M. TO 4:00 P.M.
(415) 522-2000
OUR WEBSITE: www.cand.uscourts.gov

IN ADDITION TO THE LOCAL RULES, THE FOLLOWING GUIDELINES HAVE BEEN PROVIDED TO ENSURE THAT THE FILING PROCESS IS ACCOMPLISHED WITH EASE AND ACCURACY. FOR ADDITIONAL INFORMATION OR ASSISTANCE, PLEASE CALL THE ABOVE NUMBER DURING OFFICE HOURS.

1. Documents are to be filed in the Clerk's Office at the location of the chambers of the judge to whom the action has been assigned. We do not accept filings for cases assigned to judges or magistrate judges in the Oakland or San Jose division, per Civil L.R. 3-2(b).
2. This office will retain the original plus one copy of most documents submitted. We will conform as many copies as you bring for your use. Related cases require an extra copy for each related action designated.
3. The copy retained goes directly to the assigned Judge. Courtesy copies, or instructions for couriers to deliver a copy directly to chambers are inappropriate, unless you have been instructed to do so by court order.
4. In order to facilitate the file stamping process, each original document should be submitted on top of its copies. In other words, group like documents together--as opposed to a set of originals and separate sets of copies.
5. The case number must indicate whether it is a civil or criminal matter by the inclusion of **C** or **CR** at the beginning of the number. Miscellaneous and foreign judgment matters should also be indicated with initials **MISC** or **FJ** at the end of the case number.
6. The case number must include the initials of the judge and/or magistrate judge followed by the letters designating the case Arbitration (**ARB**), Early Neutral Evaluation (**ENE**) or Mediation (**MED**)--if assigned to one of those programs.
7. The document caption should include the appropriate judge or magistrate judge involved in a particular matter or before whom an appearance is being made. This is especially important when submitting Settlement Conference Statements.
8. Documents are to be stapled or acco-fastened at the top. Backings, bindings and covers are not required. Two holes punched at the top of the original document will facilitate processing.

9. Appropriately sized, stamped, self-addressed return envelopes are to be included with proposed orders or when filing documents by mail.
10. Proofs of service should be attached to the back of documents. If submitted separately, you must attach a pleading page to the front of the document showing case number and case caption.
11. There are no filing fees once a case has been opened.
12. New cases must be accompanied by a completed and signed Civil Cover Sheet, the filing fee or fee waiver request form and an original plus **two** copies of the complaint and any other documents. For Intellectual Property cases, please provide an original plus **three** copies of the complaint. Please present new cases for filing before 3:30 p.m., as they take a considerable amount of time to process.
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SAN FRANCISCO MAGISTRATE JUDGES

MEJ
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EMC

SAN JOSE MAGISTRATE JUDGES

EAI
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OAKLAND MAGISTRATE JUDGE

WDB

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 NOTICE OF AVAILABILITY OF MAGISTRATE JUDGE
5 TO EXERCISE JURISDICTION
6

7 In accordance with the provisions of Title 28, U.S.C., § 636(c), you are hereby notified
8 that a United States magistrate judge of this district is available to exercise the court's jurisdiction
9 and to conduct any or all proceedings in this case including a jury or nonjury trial, and entry of a
10 final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if
11 all parties voluntarily consent.

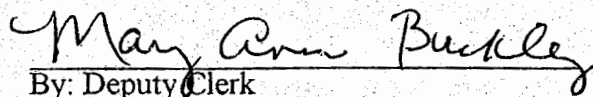
12 You may, without adverse substantive consequences, withhold your consent, but this will
13 prevent the court's jurisdiction from being exercised by a magistrate judge.

14 An appeal from a judgment entered by a magistrate judge may be taken directly to the
15 United States court of appeals for this judicial circuit in the same manner as an appeal from any
16 other judgment of a district court.

17 Copies of the Form for the "Consent to Exercise of Jurisdiction by a United States
18 Magistrate Judge" are available from the clerk of court.

19 The plaintiff or removing party shall serve a copy of this notice upon all other parties to
20 this action pursuant to Federal Rules of Civil Procedure 4 and 5.

21
22 FOR THE COURT
RICHARD W. WIEKING, CLERK

23
24 
By: Deputy Clerk

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) _____
 as (B) _____ of (C) _____

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) _____ District of _____ and has been assigned docket number (E) _____.

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) _____ days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this _____ day of _____, _____.

 Signature of Plaintiff's Attorney
 or Unrepresented Plaintiff

- A — Name of individual defendant (or name of officer or agent of corporate defendant)
- B — Title, or other relationship of individual to corporate defendant
- C — Name of corporate defendant, if any
- D — District
- E — Docket number of action
- F — Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

TO:

(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I acknowledge receipt of your request that I waive service of a summons in the action of

(CAPTION OF ACTION)

, which is case number

(DOCKET NUMBER)

in the United States District Court for the _____ District of

_____. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after _____, (DATE REQUEST WAS SENT), or within 90 days after that date if the request was sent outside the United States.

DATE

SIGNATURE

Printed/Typed Name: _____

As _____

(TITLE)

of _____

(CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of a summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

FILED

UNITED STATES COURT OF APPEALS

APR 20 2006

FOR THE NINTH CIRCUIT

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

PESTICIDE ACTION NETWORK
NORTH AMERICA; et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 06-71062

EPA No. 40 CFR Parts 9 & 26
Western District of Washington,
Seattle

ORDER

Before: KOZINSKI, RYMER and PAEZ, Circuit Judges.

On March 21, 2006 the Judicial Panel on Multidistrict Litigation ordered that this petition for review be consolidated with petition No. 06-820 in the United States Court of Appeals for the Second Circuit pursuant to 28 U.S.C. § 2112(a)(3).

The Clerk is directed to transfer the petition for review and all other pending motions to the United States Court of Appeals for the Second Circuit. Upon transfer of the petition, the Clerk shall close this case.

TRANSFERRED.

MOATT

FILED

UNITED STATES COURT OF APPEALS

APR 20 2006

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

PESTICIDE ACTION NETWORK
NORTH AMERICA; et al.,

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TRANSFERRED.

MOATT

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APR 24 2006
OFFICE OF REGIONAL COUNSEL
EPA - REGION X

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PESTICIDE ACTION NETWORK
NORTH AMERICA; PINEROS Y
CAMPELINOS UNIDOS DEL
NOROESTE; PHYSICIANS FOR
SOCIAL RESPONSIBILITY - SAN
FRANCISCO,

Petitioners,

V.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 06-71062

EPA No. 40 CFR Parts 9 & 26

**TIME SCHEDULE
ORDER**

The parties shall meet the following time schedule:

5/19/06 Appellant/petitioner's opening brief and excerpts of record shall be served and filed pursuant to FRAP 32 and 9th Cir. R. 32-1;

6/19/06 The brief of appellee/respondent shall be filed and served, pursuant to FRAP 32 and 9th Cir. R. 32-1

Failure of the appellant to comply with the Time Schedule Order will result in automatic dismissal of the appeal. 9th Cir. R. 42-1

Appellants/Petitioners without representation of counsel in a prisoner appeal may have their case submitted on the briefs and record without oral argument, pursuant to FRAP 34(a). Within 10 days of the filing of the appellant's opening brief, parties may file a statement setting forth the reasons why, in the opinion of the parties, oral argument should be heard.

FOR THE COURT:

**Cathy A. Catterson
Clerk of Court**

**By: David Vignol
Deputy Clerk**



Cathy A. Catterson
Clerk of Court

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939



(415) 556-9800

February 28, 2006

| | |
|--------------------------------------|-------------------------|
| U.S. Court of Appeals Docket Number: | 06-71062 |
| Agency Number: | 40 CFR Parts 9 & 26 |
| Short Title: | Pesticide Action v. EPA |

Dear Counsel:

Your Petition for Review has been received in the Clerk's Office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. Always indicate this Court of Appeals docket number when corresponding with this office about your case.

The due dates for filing the parties' briefs and otherwise perfecting the petition have been set by the enclosed "Time Schedule Order," pursuant to applicable FRAP rules. These dates can be extended only by court order. Failure of the petitioner to comply with the time schedule order will result in automatic dismissal of the petition. 9th Cir. R. 42-1.

The following information is being provided in an attempt to answer the most frequently asked questions regarding the appellate process. Please review this information very carefully. For convenience, we use the term "Circuit Rules" instead of "Rules of the United States Court of Appeals for the Ninth Circuit" and "FRAP" instead of "Federal Rules of Appellate Procedure."

Enclosed with this letter is an appellate processing schedule along with a case processing checklist to help you monitor the progress of your case.

Petitioners who are filing pro se should refer to the accompanying information sheet regarding the filing of informal briefs.

Keith
Matthews
PT810

General Counsel
U.S ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Ave, N.W.
Washington, DC 20460

sb

06-71062



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

WATER RIGHTS

WATER RIGHTS

WATER RIGHTS

WATER RIGHTS

WATER RIGHTS

WATER RIGHTS

The following is a list of the water rights which have been
located on the land owned by the United States, and which
are subject to the provisions of the Act of March 3, 1879,
chapter 262, entitled "An Act to provide for the location
of water rights on the public lands of the United States."
The water rights are listed in the following order:
1. Water rights located by the United States.
2. Water rights located by private parties.
3. Water rights located by the State of California.
4. Water rights located by the State of Nevada.
5. Water rights located by the State of Arizona.
6. Water rights located by the State of New Mexico.
7. Water rights located by the State of Texas.
8. Water rights located by the State of Colorado.
9. Water rights located by the State of Utah.
10. Water rights located by the State of Idaho.

WATER RIGHTS
UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C.
1900

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PESTICIDE ACTION NETWORK NORTH
AMERICA; et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

No. 06-71062

EPA No. 40 CFR Parts 9 & 26
Western Washington (Seattle)

ORDER

FILED

MAR - 6 2006

Office of the Clerk
U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
Seattle Divisional Office

DOCKETED
Seattle, WA

This case is under consideration for inclusion in the mediation program. Within 14 days of the date of this order, counsel for all parties intending to file briefs in this matter are requested to inform Chris Goelz, Circuit Mediator, at Chris_Goelz@ca9.uscourts.gov (or by fax at 206/553-4767) of their clients' positions on whether the case is appropriate for mediation, whether the court should schedule an assessment conference, and whether the court could take other steps to facilitate settlement of the dispute. This communication will be kept confidential from the court and, if requested, from the other parties in the case. **The existing briefing schedule remains in effect.**

Contact information and the procedures governing the mediation program are set out in the attached memorandum. Counsel should read the memorandum and provide a copy to their clients.

FOR THE COURT:



Lynn Warton
Deputy Clerk

3/3/06/lw

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office, Northwest Branch

New address beginning 1/31/05 → 1200 Sixth Avenue, Suite 327
Seattle, Washington 98101-3123

Circuit Mediator: Chris_Goelz@ca9.uscourts.gov -
Mediation Office: Lynn_Warton@ca9.uscourts.gov

Telephone: (206) 553-6117 Fax: (206) 553-4767

Procedures Governing the Circuit Mediation Program

A. Purpose of the Program

The Circuit Mediation Program was established pursuant to FRAP 33 and Circuit Rule 33-1. The goal of the program is to facilitate the voluntary resolution of appeals. In most cases, voluntary resolution is a result of settlement between the parties. In other cases, the focus of discussions is on managing the appeal process or other related litigation in a manner that saves the court from deciding issues unnecessarily. Each year hundreds of appeals are resolved through the mediation program

B. Mediation Alternatives

The court expects the parties and their counsel to consider carefully any possibilities for settling the case on appeal. The parties ~~may utilize without cost the services of the court's mediation office to~~ explore settlement. The court's ten mediators are full-time employees of the Ninth Circuit. They are experienced litigation attorneys who also have extensive training and experience in negotiation, mediation and Ninth Circuit practice and procedure.

Alternatively, the parties may elect to pursue settlement directly or through counsel or to schedule a mediation with a private mediator. Whether parties are pursuing settlement through the mediation office or independently, a court mediator can help with procedural matters to insure that the appellate process does not interfere with the parties'

10.1016/j.jmb.2006.06.002

efforts. The mediator is also available to answer questions that might be relevant to settlement.

C. Settlement through the Mediation Office

The mediation office can be flexible with regard to its role in the parties' settlement discussions. The mediator can pass proposals between counsel, help counsel evaluate the parties' litigation prospects, help generate settlement alternatives, and can help address procedural problems. In some cases the parties pursue settlement over a period of weeks or months by telephone and letter. In others, they schedule an in-person mediation. At the beginning of every case, the mediator will work with counsel to establish a settlement process agreeable to all parties.

In many cases, the court initiates settlement efforts by means of an "assessment conference" with counsel. The purpose of the assessment conference is to explore the parties' perspectives on settlement as well as any other issues that might help resolve the appeal. At the conference the mediator explores the factual and procedural background of the case, the issues on appeal, the possible outcomes of an appeal, and the parties' views on settlement. Frequently, the discussions include issues that are not part of the appeal. The typical assessment conference lasts 30 to 45 minutes.

D. Effect of Conference on Appellate Process

In cases in which the parties elect to pursue settlement, the mediator can "select" the case for mediation. This transfers procedural control of the case from the clerk's office to the mediation office. The mediator can adjust briefing schedules, can stay appeals, and can enter other procedural orders to facilitate settlement. As a general matter, the mediator will only enter such orders in a case with counsels' agreement. Also, if any party decides that it wishes to terminate settlement discussions, the appeal will be returned to the normal appellate track. From that point on, counsel should direct all inquiries and filings to the Clerk's office.

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In most cases, delays in briefing to explore settlement will not delay a decision in the appeal. This is because appeals are scheduled for argument and disposition based on the date the notice of appeal is filed, not the date that briefing is completed. The time for the entire appellate process, including briefing, argument and disposition, is typically 18 months to 2 years.

E. Confidentiality of the Process

In order to encourage efficient and frank settlement discussions, the court exercises great care to ensure strict confidentiality of the settlement process. Circuit Rule 33-1 provides that settlement-related information disclosed to a court mediator will be kept confidential and will not be disclosed to the judges deciding the appeal or to any other person outside the Circuit Mediation Program participants. Documents and correspondence related to settlement are maintained only in the Circuit Mediation Office and are never made part of the main Ninth Circuit case file. Should the mediator confer separately with the participants, those discussions shall also be maintained in confidence from the other participants in the settlement discussions to the extent that the communicating parties request.

In addition, participants in the Circuit Mediation Program are expected to respect the confidentiality of the settlement processes and to adhere to the following:

(1) Unless they indicate otherwise to the mediator at the initiation of any settlement discussions, all parties, attorneys and other participants in the settlement discussions are assumed to agree that any written or oral communication made by the mediator, or any party, attorney, or other participant in the settlement discussions:

(a) may not be used for any purpose in any pending or future proceeding in this or any other court or administrative forum; and

(b) may not be disclosed to anyone who is not a participant in the mediation or an authorized agent of a participant.

1. The first of the following is a true statement. The second is a false statement. The third is a true statement. The fourth is a false statement. The fifth is a true statement. The sixth is a false statement. The seventh is a true statement. The eighth is a false statement. The ninth is a true statement. The tenth is a false statement. The eleventh is a true statement. The twelfth is a false statement. The thirteenth is a true statement. The fourteenth is a false statement. The fifteenth is a true statement. The sixteenth is a false statement. The seventeenth is a true statement. The eighteenth is a false statement. The nineteenth is a true statement. The twentieth is a false statement. The twenty-first is a true statement. The twenty-second is a false statement. The twenty-third is a true statement. The twenty-fourth is a false statement. The twenty-fifth is a true statement. The twenty-sixth is a false statement. The twenty-seventh is a true statement. The twenty-eighth is a false statement. The twenty-ninth is a true statement. The thirtieth is a false statement. The thirty-first is a true statement. The thirty-second is a false statement. The thirty-third is a true statement. The thirty-fourth is a false statement. The thirty-fifth is a true statement. The thirty-sixth is a false statement. The thirty-seventh is a true statement. The thirty-eighth is a false statement. The thirty-ninth is a true statement. The fortieth is a false statement. The forty-first is a true statement. The forty-second is a false statement. The forty-third is a true statement. The forty-fourth is a false statement. The forty-fifth is a true statement. The forty-sixth is a false statement. The forty-seventh is a true statement. The forty-eighth is a false statement. The forty-ninth is a true statement. The fiftieth is a false statement. The fifty-first is a true statement. The fifty-second is a false statement. The fifty-third is a true statement. The fifty-fourth is a false statement. The fifty-fifth is a true statement. The fifty-sixth is a false statement. The fifty-seventh is a true statement. The fifty-eighth is a false statement. The fifty-ninth is a true statement. The sixtieth is a false statement. The sixty-first is a true statement. The sixty-second is a false statement. The sixty-third is a true statement. The sixty-fourth is a false statement. The sixty-fifth is a true statement. The sixty-sixth is a false statement. The sixty-seventh is a true statement. The sixty-eighth is a false statement. The sixty-ninth is a true statement. The seventieth is a false statement. The seventy-first is a true statement. The seventy-second is a false statement. The seventy-third is a true statement. The seventy-fourth is a false statement. The seventy-fifth is a true statement. The seventy-sixth is a false statement. The seventy-seventh is a true statement. The seventy-eighth is a false statement. The seventy-ninth is a true statement. The eightieth is a false statement. The eighty-first is a true statement. The eighty-second is a false statement. The eighty-third is a true statement. The eighty-fourth is a false statement. The eighty-fifth is a true statement. The eighty-sixth is a false statement. The eighty-seventh is a true statement. The eighty-eighth is a false statement. The eighty-ninth is a true statement. The ninetieth is a false statement. The ninety-first is a true statement. The ninety-second is a false statement. The ninety-third is a true statement. The ninety-fourth is a false statement. The ninety-fifth is a true statement. The ninety-sixth is a false statement. The ninety-seventh is a true statement. The ninety-eighth is a false statement. The ninety-ninth is a true statement. The hundredth is a false statement.

(2) The nondisclosure provisions of paragraph (1) do not apply if such disclosure:

(a) is agreed upon by the mediator and all participants in the mediation; or

(b) is made in the context of a subsequent confidential mediation or settlement conference with the agreement of all participants and the third-party neutral.

